

REMARKS/ARGUMENTS

Claims 1, 2, 4-6, 8, 9, 11, 13, 15, 29 and 32-34 are pending, with Claims 1, 5, 9, and 29 independent. By this Amendment, Claims 1, 4, 5, 8, 9, 29, 32 and 33 are amended and Claims 3, 7, 10, 12, 14, 16-28, 30 and 31 are cancelled. Reconsideration in view of the foregoing amendments and the following remarks is respectfully requested.

Entry to the amendments to the claims is proper under 37 CFR §1.116 because the amendments: (a) place the application in condition for allowance for all the reasons discussed herein; (b) do not raise any new issues requiring further search or consideration; (c) address a formal requirement of the Office Action; and (d) place the application in better form for appeal, if necessary. Accordingly, entry is proper under 37 CFR §1.116.

The amendments to Claims 1, 4, 5, 8, 9, 29, 32 and 33, in comparison to the claims as filed with the April 5, 2006 Amendment are shown below:

1. (Three Times Amended) Skin temperature measuring apparatus comprising:

a housing;

first and second temperature sensors spaced apart in said housing but in proximity to each other and adapted for contact with generally the same area of skin for developing first and second temperature signals, respectively; and

means responsive to said first temperature signal and said second temperature signal for:

(a) developing an indication of the temperature at the skin with which said first and said second temperature sensors are in contact; and

(b) detecting a difference between the rate of change of said first temperature signal and the rate of change of said second temperature signal which exceeds a predetermined threshold representing a difference in the proximity of said first temperature sensor to the skin and the proximity of said second temperature sensor to the skin; and

a flexible substrate on which said first and said second temperature sensors are mounted.

4. (Twice Amended) Skin temperature measuring apparatus according to claim 31 wherein said substrate has:

(a) first and second lands on which said first and said second temperature sensors, respectively, are mounted, and

(b) a neck extending between said first land and said second land and having a width narrower than the width of said first land and said second land.

5. (Twice Amended) Body function measuring apparatus comprising:

a housing;

first and second sensors spaced apart in said housing but in proximity to each other and adapted for contact with generally the same area of skin for developing first and second body function signals, respectively; and

means responsive to said first body function signal and said second body function signal for:

(a) developing an indication of the body function at the skin with which said first sensor and said second sensor are in contact, and

(b) detecting a difference between the rate of change of said first body function signal and the rate of change of said second body function signal which exceeds a predetermined threshold representing a difference in the proximity of said first sensor to the skin and the proximity of said second sensor to the skin; and
a flexible substrate on which said first sensor and said second sensor are mounted.

8. (Amended) Body function measuring apparatus according to claim 75 wherein said substrate has:

- (a) first and second lands on which said first sensor and said second sensor, respectively, are mounted, and
- (b) a neck extending between said first land and said second land and having a width narrower than the width of said first land and said second land.

9. (Twice Amended) A skin temperature measuring apparatus comprising:
a housing;

at least a first and second temperature sensor spaced apart in said housing, but in proximity to each other and adapted for contact with generally the same area of skin for developing first and second temperature signals, respectively, wherein the housing is provided with a flexible substrate on which the at least first and second temperature sensors are mounted;

a first indicator connected to one of said at least first and second temperature sensors to indicate the temperature of the skin; and

a second indicator connected to at least both of said at least first and second temperature sensors to produce an output indicating an improper sensing of the skin temperature at that same area by at least one of the at least first and second temperature sensors.

29. (Three Times Amended) A body function measuring apparatus comprising

a first sensor providing a first signal,

a second sensor spaced apart from the first sensor, the second sensor being positioned to lie proximate the first sensor, the second sensor providing a second signal,

a circuit coupled to the first and second sensors, the circuit comparing the rate of change of the first signal to the rate of change of the second signal,~~and~~

an indicator operatively coupled to the circuit to indicate whether the difference between the rate of change of the first signal and the rate of change of the second signal exceeds a threshold,~~and~~

a housing, the first sensor being received by the housing and the second sensor being received by the housing, wherein the housing is formed to include a first land and a second land, the first sensor being carried by the first land and the second sensor being carried by the second land.

32. (Twice Amended) The body function measuring apparatus of claim ~~31~~29, wherein the housing is flexible.

33. (Twice Amended) The body function measuring apparatus of claim ~~31~~29, wherein the housing is formed to include a neck connecting the first land to the second land.

All of the amendments were made to address informalities pointed out by the Examiner by adding features indicated as allowable subject matter from dependent claims into respective independent claims. Accordingly, support for the amended claims is found in the claims as previously or originally filed.

ALLOWABLE SUBJECT MATTER

Applicants acknowledge the Examiner's indication that Claims 3, 4, 7, 8, 10, 12, 14, 16 and 31-34 contain allowable subject matter and would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims, and upon overcoming the objections to the Declaration and consent of assignee. Toward that end, and to expedite prosecution, the claims have been amended to place all of the pending claims in condition for allowance with the subject matter indicated as allowable by the Examiner. For example, independent Claim 1 adds the features of objected to Claim 3, independent Claim 5 adds the features of objected to Claim 7, independent Claim 9 adds the features of objected to Claim 10, and independent Claim 29 adds the features of objected to Claim 31 and intervening Claim 30. The other amended claims, that is, Claims 4, 8, 32 and 33 are amended to correct their dependencies due to the amendments discussed above. Moreover, the objections to the Declaration and consent of assignee are obviated by the Supplemental Declaration and Statement Under 37 CFR 3.73(b) also filed in response to the Office Action. Accordingly, Applicants respectfully submit that all of the pending claims 1, 2, 4-6, 8, 9, 11, 13, 15, 29, and 32-34 are in condition for allowance as confirmed by the Examiner's indication of allowable subject matter.

FORMAL MATTERS

The application stands objected to under 37 CFR §1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. Applicants attached a Statement Under 37 CFR 3.73(b), which states that the original assignee, Air-Shields, Inc. has transferred their undivided interest in the patent to Draeger Medical Systems, Inc. via a series of

assignments/name changes from Air-Shields, Inc. to Hill-Rom Air-Shields, Inc. to Hill-Rom Manufacturing, Inc. to Hill-Rom Services, Inc. to Draeger Medical Infant Care, Inc. to Draeger Medical, Inc. to Draeger Medical Systems, Inc. These conveyances were recorded in the United States Patent and Trademark Office for U.S. Patent No. 5,732,711 at Reel/Frame: 008248/0007, 010703/0451, 019511/0958, 011796/0711, 012252/0469, 016902/0278, 019520/0854 and 019520/0889. (See attached Exhibit A). The undivided interest in the patent is transferred to Draeger Medical Systems, Inc., as recorded in the United States Patent and Trademark Office, with the Assignment of Assignor's Interest recorded on July 9, 2007 at Reel 019520, Frame 0889. Accordingly, Draeger Medical Systems, Inc. is the assignee of the entire right, title and interest of the subject Application No. 09/539,096 in compliance with 37 CFR §1.172 and 3.73. Withdrawal of the objection is respectfully requested.

The reissue oath/declaration stands objected to as being defective for failing to contain a statement that all the errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the Applicants. Claims 1-34 stand rejected as being based upon a defective reissue declaration under 25 U.S.C. §251. Applicants respectfully submit that the reissue declaration states that errors rendering the '711 patent wholly or partly inoperative or invalid caused the claims of such patent to be of more narrow scope than necessary to distinguish over the prior art, and that such errors arose without any deceptive intent. That is, such errors that rendered the '711 patent wholly or partly inoperative or invalid arose without any deceptive intent. Therefore, all errors which are being corrected in the reissue application up to the time of filing of the declaration arose without any deceptive intent on the part of the Applicant, as stated in the declaration. Moreover, the

addresses provided for each inventor in the declaration indicates the residence and mailing address for each inventor. However, to expedite prosecution, Applicants are submitting a supplemental reissue oath/declaration under 37 CFR §1.175, which states that all errors arose without any deceptive intent and clarifies the residence and mailing address for each inventor. Withdrawal of the objection and claim rejection is respectfully requested.

35 U.S.C. §102 REJECTIONS

Claims 1, 2, 5, 6, 9, 11, 13, 15, and 21-30 stand rejected under 35 U.S.C. §102(b) over Koch (U.S. Patent No. 5,385,529). Claims 17-30 stand rejected under 35 U.S.C. §102(b) over Stillman, et al. (U.S. Patent No. 4,586,149). Applicants respectfully submit that these rejections have been obviated by the amendments to the claims discussed above. These amendments place the features of claims indicated as containing allowable subject matter into their respective independent claim to place the independent claim in condition for allowance. Accordingly, Applicants submit that Claims 1, 2, 5, 6, 9, 11, 13, 15 and 17-30 no longer stand rejection over the prior art as all of the pending claims include features indicated as allowable by the Examiner in the previous office actions. Withdrawal of the rejection of the claims under 35 U.S.C. §102 is respectfully requested.

Application No. 09/539,096
Amendment Dated July 9, 2007
Reply to Office Action of March 7, 2007

CONCLUSION

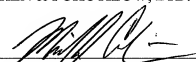
For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

July 9, 2007

By



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Please charge or credit our Account No. 03-0075 as necessary to effect entry and/or ensure consideration of this submission.

Application No. 09/539,096
Amendment Dated July 9, 2007
Reply to Office Action of March 7, 2007

EXHIBIT A



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Patent Assignment Abstract of Title

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Total Assignments: 9

Patent #: 5732711

Issue Dt: 03/31/1998

Application #: 08703794

Filing Dt: 08/27/1996

Inventors: JOSEPH F. FITZPATRICK, ANTHONY C. ROMANO, JOHN H. RICHARDS, RONALD S. KOLAROVIC

Title: BODY FUNCTION MEASURING APPARATUS

Assignment: 1

Reel/Frame: 010703/0451

Recorded: 03/13/2000

Pages: 2

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

Assignor: AIR-SHIELDS, INC.

Exec Dt: 10/05/1995

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Assignment: 2

Reel/Frame: 008248/0007

Recorded: 11/29/1996

Pages: 4

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

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Assignment: 3

Reel/Frame: 019511/0958

Recorded: 07/05/2007

Pages: 11

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

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Exec Dt: 03/27/2000

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Assignment: 4

Reel/Frame: 011796/0711

Recorded: 05/15/2001

Pages: 9

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

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Assignment: 5
Reel/Frame: 012252/0469 **Recorded:** 10/15/2001 **Pages:** 9
Conveyance: AMENDMENT TO ASSIGNMENT
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Assignment: 6
Reel/Frame: 016902/0278 **Recorded:** 12/16/2005 **Pages:** 14
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignor: HILL-ROM SERVICES, INC. **Exec Dt:** 06/24/2004
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Assignment: 7
Reel/Frame: 016216/0949 **Recorded:** 07/06/2005 **Pages:** 14
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignor: HILL-ROM SERVICES, INC. **Exec Dt:** 03/29/2005
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Assignment: 8
Reel/Frame: 019520/0854 **Recorded:** 07/09/2007 **Pages:** 6
Conveyance: MERGER (SEE DOCUMENT FOR DETAILS).
Assignor: DRAEGER MEDICAL INFANT CARE, INC. **Exec Dt:** 10/01/2006
Assignee: DRAEGER MEDICAL, INC.
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Assignment: 9
Reel/Frame: 019520/0889 **Recorded:** 07/09/2007 **Pages:** 11
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignor: DRAEGER MEDICAL, INC. **Exec Dt:** 10/01/2006

Assignee: DRAEGER MEDICAL SYSTEMS, INC.
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